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June 29, 2012

Anthony Herman, Esq.
Office of General Counsel
999 E Street, NW
Washington, DC 20463

Re: Response of Poliquin For U.S. Senate in MUR 6571

Dear Mr. Herman,

This Response is submitted by the undersigned counsel of behalf of Poliquin For U.S. Senate, in response to the Complaint designated as Matter Under Review 6571. Mr. Poliquin did not win the June 12 primary election in which he competed, and intends to terminate his campaign committee as quickly as possible after this matter is resolved. We therefore appreciate the Commission's efforts to resolve this matter expeditiously.

The Complainant¹ alleges that "Mr. Poliquin did not file a financial report for the 1st Quarter of 2012, despite having contributions and expenditures (combined) of more than \$5,000 before 31 March 2012." Complainant's allegation is both factually and legally incorrect. Poliquin For U.S. Senate did not file FEC Form 3 for January 1 – March 31, 2012, because Mr. Poliquin did not qualify as candidate during that period.

Mr. Poliquin did not qualify as a "candidate" until after April 1, 2012. Poliquin For U.S. Senate filed FEC Form 1 with the U.S. Senate on April 5, 2012. Complainant asserts that Respondent had "contributions and expenditures (combined) of more than \$5,000 before 31 March 2012." This is a misstatement of the law, and in any event, is untrue as a factual matter. 2 U.S.C. § 431(2) states that a "candidate" is "an individual who seeks nomination for election, or election, to Federal office, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election – (A) if such individual has received contributions

¹ The Complainant, Gerald Weinand, is the editor of Dirigo Blue (<http://www.dirigoblue.com/>), a blog that dubs itself, "Maine's Source for Progressive Political News."

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aggregating in excess of \$5,000 *or* has made expenditures aggregating in excess of \$5,000..." (emphasis added). See also 11 C.F.R. § 100.3.

Contrary to Complainant's assertion, contributions and expenditures are not aggregated for purposes of calculating a single \$5,000 threshold. See, e.g., First General Counsel's Report in MUR 5260 (Talent) at p. 24 n.13 ("In order to trigger the provisions of the Act, a federal candidate must *either* receive contributions *or* make expenditures in excess of \$5,000..." (emphasis added). The Act does not provide for a single threshold that aggregates contributions and expenditures. Rather, the Act provides two distinct thresholds that are used to determine "candidate" status, just as it does in the statutory definition of "political committee."

Poliquin For U.S. Senate Did Not Receive Contributions Aggregating In Excess of \$5,000 During the Period January 1 – March 31, 2012

Complainant alleges that Alamo PAC contributed \$5,000 to Respondent on March 6, 2012. According to Alamo PAC's April 15, 2012, quarterly report, it did indeed disburse (or attempt to disburse) \$5,000 to Respondent on March 6. This, however, is irrelevant. For purposes of Section 431(2), the relevant question is when Respondent *received* this contribution from Alamo PAC. See 11 C.F.R. § 102.8(a) ("Date of receipt shall be the date such person obtains possession of the contribution."); see also Congressional Candidates and Committees (Aug. 2011 ed.) at 23 ("The date of receipt is the date the campaign (or a person acting on the campaign's behalf) actually receives the contribution. 102.8(a). This is the date used by the campaign for reporting purposes....").

Respondent *received* Alamo PAC's contribution on April 20, 2012. As a representative of Alamo PAC explained to a reporter, "There was an address mixup so it did not get to him until after the deadline." John Richardson, Texas PAC says mail mixup delayed Poliquin check, *Portland Press Herald* (April 27, 2012) available at http://www.pressherald.com/blogs/open_season/149276975.html, and attached.

The only contributions *received* by Respondent prior to April 1, 2012, came in the form of in-kind contributions from the candidate himself. On March 11, Mr. Poliquin spent \$1,109.78 on campaign-related matters (\$576.60 for an airline ticket and \$533.18 for lodging). These two transactions were reported on Respondent's pre-primary report. See 11 C.F.R. § 104.3(a) ("The first report filed by a political committee shall also include all amounts received prior to becoming a political committee under § 100.5 of this chapter, even if such amounts were not received during the current reporting period.").

Respondent was not the only candidate in the race whose campaign was not financially active during the first quarter of 2012. One of Respondent's opponents, Maine State Senator

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Debra Plowman, filed Form 3 on April 15, but reported receiving contributions of only \$5,260.51, just barely over the filing threshold. State Senator Plowman reported a \$5,000 contribution from Alamo PAC, received on March 29, \$100 in unitemized contributions, and what appears to be an in-kind contribution from the candidate totaling \$160.51.

Poliquin For U.S. Senate Did Not Make Expenditures Aggregating In Excess of \$5,000 During the Period January 1 – March 31, 2012.

The only disbursements actually made by Respondent prior to April 1, 2012, were the two March 11 transactions for airfare and lodging, detailed above, totaling \$1,109.78.

Complainant alleges that "Mr. Poliquin hired help to gather the required signatures" to qualify for the ballot. It is unclear how Complainant knows this, but Mr. Poliquin did pay local College Republicans \$1,797.50 to collect signatures on his behalf. These signatures were collected and provided to Mr. Poliquin prior to March 18 state signature filing deadline, but were not invoiced to Mr. Poliquin until later in the month. Mr. Poliquin paid this amount to the local College Republican chapter from personal funds on April 2, 2012, and the transaction is reported as an in-kind contribution on Respondent's pre-primary report. Other petition signatures were collected by unpaid volunteers.²

Complainant also vaguely references "the cost of creating and hosting a website" and asserts that this cost was incurred prior to April 1, 2012. Respondent disbursed \$2,414.44 for website-related costs on April 22, 2012. This payment was for two invoices. The first invoice, dated March 29, was for \$2,000 for the initial creation and set-up of Respondent's campaign website. The second invoice, dated April 1, with payment due April 22, was for \$414.44 for e-mail related costs and the acquisition and registration of an additional domain name. Complainant thus obligated \$2,000 prior to April 1 to its web vendor.

The sum total of these first quarter disbursements and obligations is \$4,907.28.

² The value of services provided without compensation by individuals who volunteer on behalf of a candidate or political committee is not a contribution under the Act and Commission regulations. 2 U.S.C. § 431(8)(B)(i); 11 C.F.R. § 100.74.

Conclusion

As explained above, Respondent did not receive contributions in excess of \$5,000 prior to April 1, and Respondent did not expend or obligate in excess of \$5,000 prior to April 1. Accordingly, Respondent was not a "candidate" during the first quarter of 2012, and was not required to file a quarterly disclosure report on April 15. The Complaint should be dismissed as expeditiously as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Bayes", with a long horizontal flourish extending to the right.

Michael Bayes

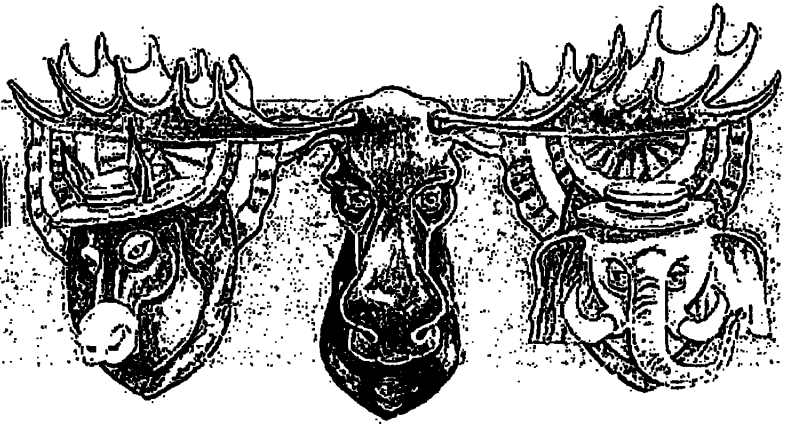
Counsel for Poliquin For U.S. Senate

Attachment

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Open Season

On the trail of Maine's political wildlife



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[Texas PAC says mail mixup delayed Poliquin check](#)

Friday April 27, 2012 | 03:23 PM

Posted by [John Richardson](mailto:John.Richardson@mainetoday.com)

@font-face { font-family: "Times New Roman"; }p.MsoNormal, li.MsoNormal, div.MsoNormal { margin: 0in 0in 0.0001pt; font-size: 12pt; font-family: "Times New Roman"; }table.MsoNormalTable { font-size: 10pt; font-family: "Times New Roman"; }div.Section1 { page: Section1; }

State Treasurer and U.S. Senate candidate Bruce Poliquin did not receive his \$5,000 check from a Texas PAC until after a federal reporting deadline, according to the Republican strategist who coordinates the PAC.

"He didn't get it until April," said Rob Jesmer, executive director of the National Republican Senatorial Committee.

That's important, at least to close observers of the primary race, because it helps explain why Poliquin didn't have to file a recent financial disclosure report along with all the other candidates.

Jesmer oversees Alamo, a political action committee created by U.S. Sen. John Cornyn, R-Texas. As I wrote in a [blog post earlier this week](#), Alamo sent \$5,000 checks to Poliquin and four other Republican candidates in March.

While the other four candidates reported March financial activity that included the donation, Poliquin did not file any report.

Poliquin's check was disbursed on March 6 along with several of the others, but it took Alamo longer to get a correct mailing address for Poliquin's campaign than it did for the others.

"There was an address mixup so it did not get to him until after the (April 1) deadline," Jesmer said today.

Any candidate who raised or spent more than \$5,000 by March 31 was required to file a financial disclosure report with the Federal Election Commission. Poliquin is the only one of 10 Republican and Democratic candidates in the race who did not file a report on fundraising and spending through March. The treasurer also declined to disclose his campaign's financial activity when asked by a reporter.

All 10 candidates in the June 12 primary will have to file updated financial disclosure reports at the end of May.

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About the Author

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Open Season targets all of Maine's political wildlife, from Portland city government to the donkeys, elephants and independents stalking the Statehouse and U.S. Capitol.

John Richardson joined the Press Herald in 1990 after working as a reporter in New Jersey. He has covered a variety of beats, including marine issues, the environment and health care. He is now covering politics and focusing on Maine's U.S. Senate race.

John can be reached at 791-6324 or jrichardson@pressherald.com

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Colin Woodard has covered politics and elections for more than two decades, from Bosnia and Bucharest to Washington, D.C., Augusta, and Portland City Hall. He has written for a wide range of national and international publications and is the author of four books, including "American Nations," a history of North America's regional cultures. He joined the Portland Press Herald at the end of April and covers political finance and lobbying, among other things.

Colin can be reached at 791-6317 or cwoodard@pressherald.com

Tom Bell is a general assignment and Portland city reporter. He began working at The Portland Press Herald in 1999 after moving to Maine from Alaska. At the Press Herald, he has covered several beats, including the State House, business, marine and education.

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